

THE NON-APPROPRIATION PARADOX: THE MODERN "FOR ME, BUT NOT FOR THEE"

By Christos Kyritsis*

*Christos Kyritsis holds an LL.M. in Air and Space Law from the University of Mississippi School of Law. His research focuses on jurisprudence, sovereignty, legal legitimacy, and the foundations of international space law. Professional website: <https://www.stasteria.com>

© Christos Kyritsis, 2026

ABSTRACT

The Outer Space Treaty prohibits national appropriation of outer space and celestial bodies, making non-appropriation one of the central principles of modern space law. But the rule raises a question that space-law scholarship has largely sidestepped: by what authority do territorial states declare that territorial sovereignty governs Earth but not the first domain beyond it?

This article argues that the real issue is not the interpretation of Article II, but the legitimacy of the legal order that produced it. The Outer Space Treaty refers repeatedly to outer space without defining it or establishing a precise boundary between terrestrial and extraterrestrial domains. That omission is not merely technical. It exposes a deeper jurisprudential problem: if states have no sovereignty over outer space, on what basis do they claim the power to impose permanent rules governing its political future?

Drawing on Stephen Gorove's analysis of the undefined character of outer space, classical theories of sovereignty, and questions of legal legitimacy, the article contends that non-appropriation is not simply a neutral rule of space governance. It reflects a structural tension in international law itself: a system that treats territorial sovereignty as the foundation of political authority on Earth while denying its future extension beyond Earth. The resulting asymmetry is usually treated as self-evident. It is not.

The article therefore asks whether non-appropriation is truly a universal norm or instead a historically contingent limit imposed by states whose own authority depends on territorial sovereignty. The issue is not whether territorial sovereignty should extend into outer space. The issue is whether the first legal regime for outer space rests on principles that have never been adequately justified.

INTRODUCTION

Is Earth part of outer space?

The question sounds absurd only because modern law has trained us to accept a distinction that is neither self-evident in nature nor fully justified in law. Physically, Earth is undeniably part of the cosmos. Legally, however, contemporary discourse treats Earth and outer space as if they were self-evidently separate worlds governed by incompatible principles: sovereignty here, non-appropriation there. That division is repeated so often that it has acquired the appearance of truth.

But repetition is not justification.

As Stephen Gorove observed, the Outer Space Treaty¹ never defines outer space.² The Treaty invokes the term repeatedly, attaches major legal consequences to it, and builds an entire legal regime around it, yet nowhere explains what outer space actually is or where it begins. The law proceeds as though the most basic question has already been settled when, in fact, it has not.

The deeper issue is not delimitation. The real question is jurisprudential: why should one legal order be built on territorial sovereignty while the domain beyond Earth is declared off-limits to it altogether? Territorial sovereignty remains the foundation of the modern international system.³ States derive authority from territory, exercise jurisdiction through territory, and preserve political independence through territorial exclusion. Outer space, by contrast, is placed outside that organizing logic.

Article II of the Outer Space Treaty provides that outer space is not subject to national appropriation by claim of sovereignty, use, occupation, or any other means.⁴ It is widely treated as one of the great achievements of space law. Yet almost no one pauses to ask the prior question: by what authority was this principle made universal?

That question matters because the states that proclaimed non-appropriation are themselves creatures of territorial sovereignty. They inherited a world organized by borders and jurisdiction, then declared that the first domain beyond Earth would be governed by a different rule. They may have done so wisely and prudently, but wisdom is not the same as legitimacy, and prudence is not the same as justification.

This article asks a simple but uncomfortable question: if territorial sovereignty is legitimate on Earth, why is it illegitimate beyond Earth? What principle transforms a foundation of political order into a prohibition the moment humanity crosses an undefined boundary? And what authority

¹ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies arts. I–II, Jan. 27, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205. [hereinafter Outer Space Treaty]

² Stephen Gorove, *Interpreting Article II of the Outer Space Treaty*, 37 Fordham L. Rev. 349 (1969). [hereinafter Gorove, *Interpreting Article II*]

³ See generally Montevideo Convention on Rights and Duties of States, Dec. 26, 1933, 49 Stat. 3097, 165 U.N.T.S. 19. (hereinafter Montevideo Convention)

⁴ Outer Space Treaty, *supra* note 1, art. II.

do present states possess to foreclose political possibilities for future generations in a domain no state owns?

The point is not to defend territorial conquest in outer space. It is to reject the complacent assumption that the non-appropriation principle is beyond critique. The issue is not what Article II says. The issue is whether its underlying logic has ever been adequately defended.

That is the problem this article confronts. Not doctrine as such, but the jurisprudence beneath doctrine. Until that foundation is justified, the prohibition of territorial sovereignty beyond Earth remains not self-evident, but contested.

I. THE QUESTION NOBODY ASKS

Modern space law rests on a distinction so familiar that it has escaped serious scrutiny: territorial sovereignty is the organizing principle on Earth, yet it is treated as illegitimate beyond Earth.⁵ The result is a legal order that permits states to build, divide, possess, and govern territory here while insisting that the first domain beyond the planet must remain beyond territorial claim. That distinction is usually treated as obvious. It is not.

The real question is not where outer space begins. It is why the first domain beyond Earth should be governed by a rule that the international system continues to treat as indispensable at home. No physical law explains that choice. Mountains do not explain it. Oceans do not explain it. The atmosphere does not explain it. The distinction is made by law, and law alone. That fact should not be softened. It should be confronted.

For decades, scholars have debated delimitation, jurisdiction, resource extraction, safety zones, and the meaning of appropriation. Those debates are real, but they all begin too late. They assume the legitimacy of a divide that has never been justified. The prior question is far more unsettling: by what authority do territorial sovereigns deny territorial sovereignty in the one domain they have not yet divided? The answer is not self-evident. It is circular.

States claim the right to prohibit appropriation in outer space because they are sovereign states. Yet sovereignty is the very principle they say cannot extend there. The legal order thus uses territorial sovereignty to ban territorial sovereignty.⁶ That is not a neutral rule; it is a contradiction disguised as consensus.

This article takes that logic seriously and rejects the impulse to defend it reflexively. The question is not whether states can make treaties. They can. The question is whether states that derive their own authority from territorial sovereignty may presumptively dictate the political future of a domain they do not own, do not define, and do not inhabit.

⁵ *Id.*

⁶ *Id.*

The issue is not whether non-appropriation is wise. The issue is whether it has been justified. The value of a principle does not eliminate the need to defend it. A principle does not become self-evident merely because it is widely accepted.

Until that question is confronted, debates about appropriation, use, occupation, and resource extraction remain derivative. They argue about the edges of a rule whose premise has never been made to justify itself. This article begins where the orthodox literature stops: with the legitimacy of the distinction itself.

That is the question nobody asks.

II. THE FICTION OF SEPARATE DOMAINS

Every legal order depends upon classification.⁷ The power to classify is the power to determine which rules apply, which rights exist, and which forms of authority are recognized. Before law regulates conduct, it first divides reality into categories. Once those categories are accepted, the legal consequences that follow often appear natural, inevitable, and beyond dispute. The distinction between Earth and outer space is one such classification.

Modern space law treats the distinction as though it reflects an objective feature of reality. In practice, however, it functions as a legal choice. Earth becomes the domain of territorial sovereignty. Outer space becomes the domain of non-appropriation. From that initial division, an entire legal architecture follows. The significance of this observation is frequently overlooked. The question is not whether the distinction is useful. It plainly is. The question is whether usefulness should be confused with necessity.

No natural phenomenon requires political authority to stop where outer space begins. Nature recognizes neither sovereignty nor non-appropriation. It recognizes neither states nor treaties. The distinction exists because law created it. And what law creates, law may justify—or fail to justify.

This is not unusual. International law is filled with classifications that shape political reality. Borders divide landscapes without visible markers, and maritime boundaries partition oceans that contain no natural lines. Such classifications are not false; they are instruments through which legal systems organize power. The distinction between Earth and outer space performs a similar function. It determines where territorial sovereignty is presumed legitimate and where it is presumed illegitimate. That choice should not be mistaken for a discovery.

The prevailing discourse often treats non-appropriation as though it were a natural consequence of outer space itself. Yet nothing about outer space requires such a conclusion. The principle emerges from a legal judgment concerning how political authority ought to be organized beyond Earth. Whether that judgment is wise, prudent, or even necessary is a separate question. The point is that it remains a judgment, and like any other legal judgment, it requires justification. Once the distinction between Earth and outer space is understood as a legal construction rather than a physical fact, the debate changes fundamentally. The issue is no longer where one domain ends

⁷ See generally H.L.A. Hart, *The Concept of Law* (1961).

and another begins. The issue becomes who created the distinction, what purpose it serves, and why the principles governing one domain are presumed inapplicable in the other.

The chapters that follow examine those questions. Before asking whether territorial sovereignty may extend beyond Earth, it is necessary to understand how law first constructed a world in which that question could even arise.

III. A WORLD BUILT ON TERRITORY

Modern international law was not built upon non-appropriation. It was built upon territory. Territory determines jurisdiction, authority, borders, and political identity. States exist through territory. Governments govern through territory. The international order itself rests upon territorial units exercising exclusive authority within recognized boundaries. Territory is not merely an element of statehood. It is the foundation of the modern state system.⁸

This reality is reflected throughout international law. The Montevideo Convention identifies territory as a defining characteristic of statehood.⁹ Jurisdiction is ordinarily territorial, and sovereign equality presupposes the existence of sovereign territorial units. The modern international order was not built despite territorial sovereignty. It was built through territorial sovereignty.

Whatever moral judgments may be attached to the historical processes that produced the modern state system, they produced the political map that exists today. Contemporary states emerged through the acquisition, control, administration, and defense of territory. That is not a defense of the process. It is a description of the result.

That dependence upon territory is so pervasive that it often escapes notice. Territorial sovereignty is frequently treated not as a theory of political organization but as a condition of political reality itself. Yet that assumption becomes significant once attention turns beyond Earth. If territorial sovereignty remains the organizing principle of political authority on Earth, the question naturally arises why the same principle is treated differently elsewhere. Before addressing that question directly, however, it is necessary to examine a prior issue: by what authority do states prescribe legal rules for a domain over which they possess no sovereign title? It is to that question that the discussion now turns.

IV. WHO MAY MAKE LAW FOR WHAT THEY DO NOT POSSESS?

The preceding discussion established two propositions. First, the modern international order rests upon territorial sovereignty. Second, the distinction between Earth and outer space is a legal construction rather than a physical necessity.¹⁰ These observations lead to a more fundamental question: by what authority do states establish legal rules for a domain over which they possess no sovereign title?

⁸ Montevideo Convention, *supra* note 3, art. 1, 3. 9

⁹ *Id.* art. 1

¹⁰ Gorove, Interpreting Article II, *supra* note 2.

The conventional answer appears straightforward. States possess the capacity to conclude treaties.¹¹ The Outer Space Treaty is a treaty.¹² States consented to its provisions and thereby created a legal framework governing activities in outer space. As a matter of positive law, the explanation is largely sufficient. As a matter of jurisprudence, it is not. Consent may explain why states are bound by a treaty. It does not necessarily explain why states possess the authority to prescribe the political organization of a domain that belongs to none of them.

The distinction is important. Treaties ordinarily regulate conduct within an existing legal framework. States agree to regulate trade, navigation, aviation, diplomacy, environmental protection, and other matters. In such cases, the treaty regulates activities; it does not determine the fundamental character of an entire domain. The Outer Space Treaty goes further. It does not merely regulate conduct in outer space. It establishes the foundational principle on which political authority in outer space is to be organized. The prohibition of national appropriation is therefore not simply a rule of behavior, but a rule concerning the permissible structure of political power itself.

The resulting difficulty is evident. The states that created the rule possessed sovereignty over their own territories. They did not possess sovereignty over outer space. Yet they asserted the authority to determine which forms of political organization would be permitted there and which would not. The issue is not whether states possessed good reasons for doing so. The issue is whether reasons alone create authority. States may conclude that a particular political arrangement is undesirable. They may conclude that it is dangerous. They may even conclude that it should never occur. None of those conclusions automatically answers the prior question of why they possess the authority to make that determination for a domain over which none of them holds sovereign title.

Stated differently, if territorial sovereignty derives its legitimacy from territory, on what basis can territorial sovereigns prohibit territorial sovereignty in a territory that belongs to none of them? The question is seldom asked because the legitimacy of the Outer Space Treaty is generally presumed. Yet legitimacy is not self-generating. Every exercise of authority requires a source. Consent explains obligation; it does not necessarily explain authority. For that reason, the central issue is not whether states may regulate activities in outer space. They plainly may. The more difficult question is whether the authority to regulate activities necessarily includes the authority to foreclose entire forms of political organization before they have ever emerged.

That question becomes even more significant when considered in light of the principle upon which the prohibition itself rests. It is to that principle that the discussion now turns.

V. ARTICLE II AND THE PARADOX OF NON-APPROPRIATION

Article II of the Outer Space Treaty provides that outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.¹³ The provision is generally regarded as one of the central

¹¹ Vienna Convention on the Law of Treaties art. 6, May 23, 1969, 1155 U.N.T.S. 331. [hereinafter Vienna Convention]

¹² Outer Space Treaty, *supra* note 1

¹³ *Id.* art. II.

achievements of modern space law. It prevents outer space from becoming another object of territorial competition and establishes the principle that territorial sovereignty may not extend beyond Earth.

That conventional understanding is not wrong. It is, however, incomplete. The present discussion is not concerned with the doctrinal interpretation of Article II. It does not address whether resource extraction constitutes appropriation, whether safety zones amount to de facto territorial claims, or whether particular commercial activities are compatible with the Treaty. Those debates concern the application of the rule. The issue examined here is more fundamental. Why does the rule exist?

The conventional answer is straightforward. Humanity sought to avoid reproducing in outer space the territorial conflicts, rivalries, and struggles that characterized much of terrestrial history. The prohibition of appropriation therefore represents an attempt to establish a different model for humanity's first extraterrestrial domain. The architects of the Outer Space Treaty sought to prevent the extension of terrestrial geopolitical competition beyond Earth. In this sense, Article II may be understood as a conscious rejection of the territorial logic that shaped much of human history.

The paradox is not the prohibition itself. The paradox is who imposed it. The states that adopted Article II were territorial sovereigns. The authority through which they prohibited territorial sovereignty beyond Earth was itself a product of territorial sovereignty on Earth. The prohibition was not created from outside the territorial system; it was created by that system.

The usual justification is prudential. Humanity had already experienced the consequences of territorial rivalry, colonial expansion, and conflict over land. Article II may therefore be understood as an effort to prevent the repetition of terrestrial history in outer space. Yet it does not fully resolve the philosophical problem. If territorial sovereignty is rejected because of its historical association with conquest and conflict, why does it remain the organizing foundation of political authority on Earth? Conversely, if territorial sovereignty remains legitimate on Earth despite that history, why does that legitimacy disappear beyond Earth?

This is where Article II may be read in two different ways. The first reading treats Article II as the expression of a universal principle. Under this view, territorial appropriation beyond Earth is prohibited because some domains ought to remain beyond sovereign possession. If this interpretation is correct, Article II represents a principled limitation on state power. The second reading treats Article II as a historically contingent limitation. Under this view, the prohibition emerged only after Earth had already been divided among sovereign states. Existing territorial arrangements remained intact while future territorial acquisition beyond Earth was prohibited. If this interpretation is correct, Article II appears less as a universal principle than as a rule adopted by those who already possessed territory.

The distinction is significant. If Article II expresses a universal principle, then that principle should be capable of justification beyond the mere fact of treaty consent. If it represents a historically contingent limitation, then its authority rests upon a narrower foundation and invites closer scrutiny. The issue becomes particularly apparent in the Treaty's language concerning mankind. Outer space is described as the province of all mankind¹⁴ while territorial appropriation is

¹⁴ *Id.* art. I

prohibited. The moral force of that formulation is evident. Yet it raises a difficult question: if mankind is the proper organizing principle for outer space, why is it not the organizing principle for Earth?

When humanity turned its attention beyond Earth, the same states that derive their legitimacy from territorial sovereignty declared that territorial sovereignty would no longer apply. That distinction is generally treated as self-evident. It is not. If territorial sovereignty remains the accepted basis of political organization on Earth, what principle justifies its exclusion from outer space?

If territorial sovereignty is fundamentally incompatible with legitimacy, the difficulty is not confined to outer space. The contemporary international order itself rests upon territorial sovereignty. If territorial sovereignty remains legitimate on Earth, however, the burden shifts. The exclusion of territorial sovereignty from outer space can no longer be treated as self-evident and must instead be independently justified.

Until that question is answered, the burden remains on proponents of the non-appropriation principle to explain why the logic that legitimizes territorial sovereignty on Earth ceases to apply beyond it. The paradox of Article II is therefore not that it prohibits territorial sovereignty in outer space. The paradox is that it does so through the authority of states whose own existence depends upon territorial sovereignty. That paradox leads directly to the broader problem at the center of this article: the modern legal logic of “for me, but not for thee.”

VI. “FOR ME, BUT NOT FOR THEE”

The international community treats territorial sovereignty as the foundation of political organization on Earth¹⁵, yet rejects territorial sovereignty in outer space. The distinction is often presented as self-evident and rarely requires justification. Yet once examined closely, it raises a question that cannot easily be ignored: what principle explains why territorial sovereignty is legitimate in one domain and illegitimate in another?

Good intentions do not eliminate the need for justification. The question is whether the distinction upon which the non-appropriation principle rests can be justified.

The first legal regime established beyond Earth rejected territorial sovereignty as a permissible basis of political organization. Outer space was declared free for exploration and use by all states and insulated from national appropriation. The principle appears straightforward, yet its implications are profound: a generation that inherited a world already divided into sovereign territories prescribed rules for territories that had not yet been occupied, settled, governed, or politically organized.

The observation instead directs attention to the authority through which those rules were established. Throughout history, political communities acquired territory, established jurisdiction, developed institutions, and eventually evolved into recognized sovereign entities. The contemporary international order itself emerged through that process. Outer space represents the

¹⁵ Montevideo Convention, *supra* note 3

first major domain in which humanity attempted to prevent that process from occurring before it began.

The conventional justification is familiar and possesses considerable force. Territorial competition contributed to conflict, conquest, colonization, and war. The prohibition of territorial sovereignty in outer space therefore represents an effort to ensure that humanity's future expansion follows a different path. That explanation deserves serious consideration. Yet it does not fully resolve the underlying problem. If territorial sovereignty is sufficiently legitimate to remain the foundation of political organization on Earth, why is it insufficiently legitimate to serve as the foundation of political organization beyond Earth? Conversely, if territorial sovereignty is inherently problematic, why does the international order continue to depend upon it?

The difficulty is not that one answer must necessarily be correct and the other incorrect. The difficulty is that the distinction itself is frequently assumed rather than explained. A principle that is genuinely universal should apply regardless of time, place, or beneficiary. A principle that changes according to circumstance requires justification. The non-appropriation principle is frequently presented as universal, yet it operates within a world whose political institutions continue to derive authority from territorial sovereignty. The result is a system in which territorial sovereignty remains legitimate for existing states while becoming illegitimate for future territorial development beyond Earth.

It is at this point that the phrase “for me, but not for thee” becomes relevant.

The phrase describes a structural asymmetry within the existing legal order. Existing states continue to derive legitimacy, jurisdiction, and political authority from territorial sovereignty, while future political communities are denied access to the same organizing principle beyond Earth. Whether the distinction is justified remains the question.

The issue therefore returns to legitimacy. The central question is not whether territorial sovereignty should be extended into outer space. Nor is it whether Article II should be abandoned. The question is whether a legal order can coherently rely upon territorial sovereignty for its own existence while simultaneously denying its legitimacy elsewhere.

Until that distinction is justified, the prohibition of territorial sovereignty beyond Earth remains vulnerable to the criticism that it represents not a universal principle but a historically contingent limitation imposed by those who already possess territory. The significance of this problem extends beyond Article II itself. It raises a broader question concerning the authority of the present generation to determine the legal possibilities available to future generations. It is to that question that the discussion now turns.

VII. THE AUTHORITY OF THE PRESENT OVER THE FUTURE

The preceding discussion focused on the relationship between territorial sovereignty, legal authority, and the non-appropriation principle. Yet an even deeper question remains. Assuming the states that adopted the Outer Space Treaty possessed the authority to conclude international

agreements, what authority did they possess to determine the political possibilities available to future generations?

This question occupies a unique place within the law of outer space. Most legal systems govern existing societies, existing territories, and existing political communities. The Outer Space Treaty confronted a fundamentally different situation. It sought to establish legal rules for a domain that was largely unoccupied, politically undeveloped, and beyond the effective control of any state. In 1967, no permanent settlements existed beyond Earth, no extraterrestrial political communities existed, and no future settlers participated in the drafting of the Treaty. Nevertheless, the Treaty established principles intended not merely to regulate contemporary conduct but to define the legal framework within which future generations would operate.

A rule regulating present conduct is one thing; a rule foreclosing future political possibilities is another. The prohibition of territorial appropriation may therefore be understood as more than a limitation upon the behavior of existing states. It may also be understood as a limitation upon the forms of political organization available to future communities beyond Earth. Before any permanent extraterrestrial society emerged, before any independent political institutions developed, and before any future settlers could participate in determining their own political arrangements, one particular possibility—territorial sovereignty—was declared impermissible.

The conventional response is that states possess authority to conclude treaties and that future generations routinely inherit legal frameworks created by those who came before them. Constitutions, statutes, institutions, and international agreements often outlive their creators. The mere fact that a rule affects future generations does not render it illegitimate. Yet outer space presents an unusual case. The question is not whether future generations inherit legal institutions. The question is whether a generation that never settled outer space may determine in advance the forms of political organization available to those who eventually do.

The distinction may be illustrated by a historical analogy. Suppose the states that emerged from the Peace of Westphalia had collectively declared that no new sovereign state could ever be created anywhere on Earth.¹⁶ Such a rule would have predetermined the political possibilities available to future generations. The emergence of new states, independence movements, decolonization processes, and political communities would all have been constrained by a decision made centuries earlier by those who could not possibly anticipate the circumstances they sought to govern. Most contemporary observers would regard such a claim with skepticism, because the authority of the past is not ordinarily regarded as unlimited.

Outer space raises a similar question. By prohibiting territorial sovereignty before permanent extraterrestrial societies exist, the present generation effectively determines one aspect of the political framework within which future generations must operate. The issue is not whether territorial sovereignty should ultimately emerge beyond Earth. The issue is whether present institutions possess sufficient authority to foreclose that possibility in advance.

Existing states inherited a world already organized around territorial sovereignty. Their authority was not diminished by the fact that previous generations had acquired territory, established

¹⁶ Treaty of Westphalia, Oct. 24, 1648, 1 Consol. T.S. 271.

borders, and created political institutions. Future communities beyond Earth may reasonably ask why a different principle should govern them. The question is not whether future generations will accept territorial sovereignty, nor whether they will reject it. The question is whether they should possess the ability to make that determination for themselves.

At its core, the issue is one of political self-determination across time. The non-appropriation principle may represent a profound moral achievement. Yet even a moral achievement does not eliminate the question of authority across generations. A principle adopted by one generation remains subject to scrutiny when it seeks to determine the political possibilities available to generations that do not yet exist.

The law of outer space therefore confronts a challenge rarely encountered elsewhere in international law. It must explain not only why territorial sovereignty is prohibited today, but why present generations possess the authority to prohibit it tomorrow. The significance of that question extends beyond sovereignty itself. It reaches the broader issue of who possesses the authority to define humanity's future before that future arrives. The answer may ultimately determine whether the non-appropriation principle is understood as a universal commitment grounded in legitimacy or merely as a historical choice imposed upon those who had no opportunity to participate in making it.

VIII. ARISTOTLE AND THE PROBLEM OF UNEXAMINED PREMISES

These persons, indeed, therefore, as we have said, even thus far have adopted into their systems two causes, as we have defined them in our Physics,—I mean the material cause, and the cause, principle of the origin of motion; that is, the efficient cause: obscurely, no doubt, and by no means clearly, but, in a manner, like the conduct of those who are unexercised in battles; for these latter, also, advancing forwards against their adversaries, strike frequently skilful blows: but neither do those combatants act thus from a scientific system, nor do these early speculators appear like men who understand that they are making the assertions which they actually are; for in no respect, almost, do they appear to employ these first principles, save to a small extent.¹⁷

— Aristotle, *Metaphysics*, Book I (*Alfa*), Chapter 4

Aristotle's criticism was directed toward philosophers who advanced propositions without fully examining the implications of their own premises. The problem he identified was not intellectual weakness but intellectual inconsistency. The modern discourse surrounding Article II of the Outer Space Treaty presents a similar difficulty. Vast scholarly effort has been devoted to determining what constitutes appropriation, whether resource extraction is permissible, how safety zones should operate, whether operational exclusivity amounts to de facto control, and the extent to which states may exercise jurisdiction over activities beyond Earth. These discussions have produced valuable insights, but they generally begin from the assumption that the legitimacy of the non-appropriation principle has already been established.

¹⁷ Aristotle, *The Metaphysics of Aristotle* 19 (John H. McMahon trans., George Bell & Sons 1887).

The result is a body of scholarship that devotes considerable attention to the consequences of Article II while devoting comparatively little attention to the premises upon which Article II rests. Debate focuses on the scope of the rule, the meaning of the rule, and the application of the rule. Far less attention is devoted to the prior question of why the rule possesses legitimacy in the first place. The issue is therefore not whether existing interpretations are correct or incorrect. The issue is whether the foundational assumptions that make those interpretations possible have themselves been adequately examined.

Yet the same legal order declares that territorial sovereignty must not extend beyond Earth. The difficulty is that the justification is frequently assumed rather than demonstrated. Territorial sovereignty is treated as indispensable to the modern state system and yet impermissible in the first domain beyond Earth. That tension is often acknowledged indirectly, but seldom examined as a problem requiring independent justification.

The point is not that Article II is mistaken. The point is that the burden of justification remains. If territorial sovereignty is inherently illegitimate, consistency would appear to require a reconsideration of its continued role on Earth. If territorial sovereignty remains a legitimate basis of political authority on Earth, an explanation is required as to why that legitimacy disappears beyond Earth. Until that explanation is provided, the distinction remains vulnerable to the criticism that it reflects historical circumstance rather than universal principle.

Seen in this light, the prohibition of territorial sovereignty in outer space raises a possibility that space-law scholarship has been reluctant to confront directly. The principle may represent not the transcendence of territorial politics but its culmination. Humanity may have declared the age of territorial acquisition over only after the available territory had already been divided. If so, the non-appropriation principle would appear not as a departure from the historical logic of territorial sovereignty but as its final expression.

Aristotle's warning therefore remains relevant. The greatest weakness of a proposition often lies not in its explicit claims but in the assumptions that remain unquestioned. A legal system may spend decades refining the interpretation of a rule while never examining whether the premises upon which the rule rests can withstand the logical consequences of their own assertions. The prohibition of territorial sovereignty in outer space may ultimately be justified. Before it can be justified, however, it must first be subjected to the scrutiny that Aristotle demanded of every serious proposition: the examination of its premises.

That examination has been the purpose of this article.

CONCLUSION

This article began with a question that appears deceptively simple: Is Earth part of outer space?

The significance of that question was never whether Earth should be regarded as legally part of outer space, nor whether contemporary international law should abandon the practical distinction between terrestrial and extraterrestrial domains. Its purpose was to expose a more fundamental

issue concerning the foundations of authority, sovereignty, and legal legitimacy within the modern law of outer space.

The analysis that followed focused on the consequences of that problem. The Outer Space Treaty does not define outer space, yet upon this undefined domain international law imposes one of its most consequential principles: the prohibition of territorial sovereignty. The central issue examined throughout this article has therefore not been the interpretation of Article II, but the legitimacy of the principle that Article II embodies.

The argument advanced here is straightforward: principles claiming universal validity must ultimately be capable of justifying themselves. If territorial sovereignty remains the accepted foundation of political legitimacy on Earth, then the prohibition of territorial sovereignty beyond Earth requires a justification that has yet to be fully articulated. If such a justification exists, it should be stated openly and defended directly. If it does not, then the philosophical foundations of the non-appropriation principle may be less secure than is commonly assumed.

The article therefore returns to the question that emerged from every stage of the analysis:

Why is territorial sovereignty lawful for those who already possess territory, yet unlawful for those who may seek it in the future?

The burden is not on those who question the distinction. The burden is on those who would treat it as self-evident.

June 2026